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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,182	10/11/2001	Takaaki Shimada	SHC0152	1938

832 7590 10/21/2002

BAKER & DANIELS
111 E. WAYNE STREET
SUITE 800
FORT WAYNE, IN 46802

EXAMINER

ANDERSON, CATHARINE L

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 10/21/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/976,182

Applicant(s)

SHIMADA ET AL.

Examiner

C. Lynne Anderson

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Ch

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2,3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

Claim 1 recites the limitation "the top and back sheets" in lines 5-6. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "the core" in line 19. There is insufficient antecedent basis for this limitation in the claim.

Claim 2 recites the limitation "said waist elastic members" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 3 recites the limitation "the waist elastic member" in line 22. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamamoto et al. (5,749,865).

Yamamoto discloses a disposable pull-on undergarment, as shown in figure 1, comprising a liquid pervious topsheet 10, a liquid impervious backsheet 11, and a liquid absorbent core 12. The undergarment has front and rear waist-encircling regions 17 and 18, a crotch region 19, a waist opening 21, and a pair of leg openings 22. The front and rear waist-encircling regions 17 and 18 comprise a first elasticized zone 28a and a second elasticized zone 28b. The tensile stress of the first elasticized zone 28a is greater than the second elasticized zone 28b, as disclosed in column 3, line 60 through column 4, line 15.

With respect to claim 2, waist elastic members 29 extend in the waist-encircling direction, as shown in figure 1. A plurality of auxiliary elastic members 30 are spaced longitudinally apart and extend in the waist-encircling direction in the first and second elasticized zones 28a and 28b. The auxiliary elastic members 30 are located between the waist elastic members 29 and the leg openings 22, as shown in figure 2. The tensile strength of the elastic members comprising the first elasticized zone 28a is greater than that of the elastic members comprising the second elasticized zone 28b, as disclosed in column 3, line 60 through column 4, line 15.

With respect to claim 3, waist elastic members 29 extend in the waist-encircling direction, as shown in figure 1. A plurality of first auxiliary elastic members 30 are spaced longitudinally apart and extend in the waist-encircling direction in the first

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elasticized zones 28a, and a plurality of second auxiliary elastic members 30 are spaced longitudinally apart and extend in the waist-encircling direction in the second elasticized zones 28b. The auxiliary elastic members 30 are located between the waist elastic members 29 and the leg openings 22, as shown in figure 2. The tensile strength of the first elastic members comprising the first elasticized zone 28a is greater than that of the second elastic members comprising the second elasticized zone 28b, as disclosed in column 3, line 60 through column 4, line 15.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamamoto et al. (5,749,865).

Yamamoto discloses all aspects of the claimed invention but remains silent as to the exact elongation stress values of the first and second elasticized zones 28a and 28b. Yamamoto discloses the elongation stress of the second elasticized zone 28b is 5 to 85% of the elongation stress of the first elasticized zone 28a, as described in column 4, lines 45-47. It would have been obvious to one of ordinary skill in the art at the time of invention to make the first elasticized zone 28a with an elongation stress of 0.2 – 2.0 N/25mm and the second elasticized zone 28b with an elongation stress of 0.1 – 0.6 N/25mm, since it has been held that where the general conditions of a claim are

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disclosed in the prior art, discovering the optimum or workable ranges involves only routing skill in the art. *In re Aller*, 105 USPQ 233.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patents 6,364,863; 5,941,865; and 5,817,087 pertain to disposable undergarments having first and second elasticized zones.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, Primary Examiner Dennis Ruhl can be reached on (703) 308-2262. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

CUA
cla
October 16, 2002


DENNIS RUHL
PRIMARY EXAMINER